

**Amendment and Response**

Applicant: Charley Lloyd

Serial No.: 09/781,583

Filed: February 12, 2001

Docket No.: 5520USA

Title: PORTABLE CONTAINER SEPARATELY CONTAINING TWO CONSUMABLE PRODUCTS, AND A DRY CONSUMABLE PRODUCT, ESPECIALLY RTE CEREAL, FOR USE THEREWITH

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**REMARKS**

This Amendment is responsive to the non-final Office Action mailed May 9, 2002. In that Office Action, a restriction requirement directed toward the inventions of Group I (claims 1-24, 32-45) and Group II (claims 25 – 31) was recited, along with an indication of a previous oral Election without traverse to prosecution the invention of Group I. Claims 21 and 24 were rejected under 35 U.S.C. §102(b) as being anticipated by Dickerson, U.S. Patent No. 5,706,980 ("Dickerson"). Claims 1-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Newarski, U.S. Patent No. 5,727,679 ("Newarski") in view of Christianson, U.S. Patent No. 3,686,001 ("Christianson") and Von Fulger, U.S. Patent No. 4,759,942 ("Von Fulger"). Claims 22 and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dickerson in view of Christianson, Von Fulger, and Newarski. Claims 32-34 and 36-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dickerson in view of Christianson. Claim 35 was rejected under 35 U.S.C. §103(a) as being unpatentable over Dickerson in view of Christianson and Von Fulger. Claims 39, 40, and 43-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Newarski in view of Von Fulger. Claims 41 and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Newarski in view of Von Fulger and Christianson. Finally, claims 1-24 and 32-45 were provisionally rejected under the judicially-created Doctrine of Obviousness-Type Patenting as being unpatentable over claims of co-pending U.S. Application Serial Nos. 09/781,581 and 09/781,582 in view of one or more of Dickerson, Newarski, Christianson, and Von Fulger. With this response, the previous election of Group I is confirmed; claims 25-31 cancelled; claims 1, 6, 14, 39, 41, and 45 amended; and newly presented claims 46-52 added. It is believed that all claims are now in a condition for allowance.

**Restriction Requirement**

Applicant hereby confirms the oral Election without traverse to prosecute the invention of Group I (claims 1-24 and 32-45). In conjunction with this election, claims 25-31 have been cancelled.

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**Provisional Rejections**

With respect to the provisional rejections of claims 1-24 and 32-45 under the judicially-created Doctrine of Obviousness-Type Double Patenting, appropriate Terminal Disclaimers relating to U.S. Application Serial Nos. 09/781,581 and 09/781,582 are included with this Response. It is respectfully submitted that in light of these Terminal Disclaimers, all obviousness-type double patenting rejections have been traversed.

**35 U.S.C. §§102, 103 Rejections**

Aspects of the present invention relate to a portable, packaged consumable good article separately containing liquid and dry consumable products. The liquid and dry products are contained within first and second compartments, respectively, provided by the container. Separate, restricted flow pour openings are provided for each of the compartments. To this end, the dry consumable product is uniquely configured to optimize flow or dispensement through the pour opening associated with the dry (or second) compartment. This represents a significant improvement in the on-the-go handed consumption, dual consumable product packaging art. In particular, previous efforts have focused solely on optimizing the container itself, in terms of assembly, compartment construction, and consumer presentation. While some attention has been given to better regulating flow of the liquid consumable product from the container, no consideration has been given to dispensement (or consumption) of the dry consumable product. Instead, previous on-the-go, dual consumable product package articles simply provide an opening for the dry product to be dispensed, and utilize known, available dry food products. As a result, even though these containers embody packaging enhancements as standalone containers, in actual use they are of marginal utility as common dry food products (e.g., RTE cereals) are simply not configured for optimal flow through a restricted opening. This is especially true for containers designed to dispose food directly into the consumer's mouth. The present invention overcomes this marked disadvantage.

For example, amended claim 1 relates to a packaged consumable good article separately containing a liquid consumable product and a dry consumable product. The container is adapted

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to facilitate on-the-go consumption of the contained products, and provides a pour opening that facilitates restricted flow of the dry consumable product. The dry consumable product comprises a plurality of substantially uniform, substantially spherical pieces each having a diameter not greater than 0.4 inch and a density not less than 225g/100 inch<sup>3</sup>. It is respectfully submitted that none of these cited references, alone or in combination, teach or suggest the invention of amended claim 1.

The Examiner has relied upon a combination of Newarski in view of Christianson and Von Fulger in rejecting claim 1. As a starting point, it is noted that the container 10 of Newarski is not adapted to facilitate on-the-go consumption of the contained milk 13 and cereal 15. Instead, the Newarski container 10 requires a consumer to place the container 10 on a table and use two hands, one to hold the container 10 and the other to operate a spoon 50 that is otherwise included with the Newarski packaging. Thus, regardless of what cereal or other dry consumable product is used with the Newarski container 10, the resulting combination does not teach or suggest the invention of amended claim 1.

In addition, it is respectfully submitted that other limitations of amended claim 1 are not satisfied by Christianson or Von Fulger, and that a requisite suggestion to combine either of these references with a container adapted to provide on-the-go consumption does not exist. For example, Christianson relates to an RTE breakfast cereal that includes both RTE cereal components and soluble puffed sugar bodies impregnated with a flavor component (Christianson, Abstract). The base, RTE cereal component is any available RTE cereal, and thus inherently does not satisfy the limitations of amended claim 1. With respect to the flavor-containing puffed sugar body, Christianson does not allude to a final shape (spherical or otherwise). In this regard, it is respectfully submitted that the Examiner's reference to "Cocoa Puffs® in Example 1" is misplaced. Example 1 refers to puffed sugar bodies produced pursuant to the example being mixed with an available base RTE product of Cocoa Puffs®. Thus, the Cocoa Puffs® of "Example 1" are simply existing Cocoa Puffs®, not a newly formulated version of the same. Further, the density units ascribed to the puffed sugar body component is referenced by Christianson in terms of volume per unit weight as opposed to the conventional designation of

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mass per unit volume. Thus, although it is understood how the Examiner arrived at the purported conversion of  $5 \text{ inch}^3/\text{oz} - 35 \text{ inch}^3/\text{oz}$  to  $567\text{g}/100 \text{ inch}^3 - 81\text{g}/100 \text{ inch}^3$ , these converted numbers make little sense as the clear intent of the density range listings provided in Christianson should relate to a minimum to maximum density range identification as opposed to the maximum-minimum range asserted by the Examiner. Notwithstanding Christianson's inadequate enablement of the density range asserted by the Examiner, it is further respectfully submitted that Christianson does not teach that the puffed sugar body component has a diameter of about 0.25 inch. In particular, the Examiner has referenced column 4, lines 40-55 as providing the requisite teaching. It is respectfully submitted that the reference to "¼ inch in diameter" is in reference to the sugar body prior to puffing. In particular, the referenced text describes that after mixing and kneading of identified ingredients, the sugar mass is formed into a desired shape, such as pellets of about ¼ inch in diameter. After forming this desired shape, the pellets are then vacuum-puffed (Christianson, column 4, lines 46-54). This puffing operation will greatly increase an overall size, and thus maximum outer dimension, of the pellets. Thus, it is likely that a pellet having a pre-puffed diameter of about ¼ inch will have a post-puffed diameter greater than 0.4 inch. Christianson does not teach to the contrary. Regardless of the exact dimension, Christianson simply does not teach a final puffed product having an outer dimension that is not greater than 0.4 inch as otherwise provided by amended claim 1. Finally, it is noted that Christianson has prepared the puffed sugar bodies for augmenting or flavoring milk when dispensed therein. That is to say, the benefits of the Christianson puffed sugar body are only witnessed when consumed in a normal fashion; e.g., combined in a bowl with milk. Because an on-the-go consumption container will not pre-mix the cereal and milk, there is no suggestion to combine the puffed cereal component of Christianson with an on-the-go consumption container.

Von Fulger is similarly unavailing. Von Fulger relates to a process for producing high fiber expanded cereals, and describes a bran material-based cereal dough expanded by a single screw or twin-screw cooker extruder. Von Fulger does not describe the resulting shape of the cereal pieces, or make reference to a substantially uniform product. Further, Von Fulger does

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not teach or even mention a designated maximum outer dimension or diameter. With respect to the Examiner's indication that Von Fulger provides a cereal piece similar to Trix®, it is respectfully noted that reference to this product is not used to describe a final shape or size of the disclosed bran-based cereal. Instead, at column 8, lines 5-9, Von Fulger simply refers to a finding that Trix® cereal has an average particle density of 0.17g/cc. This density value is then used as a comparison point relative to cereal products produced in accordance with the Von Fulger teaching. That is to say, Von Fulger does not teach that the bran-based expanded cereal is identical to Trix®, only that the densities possibly achieved with the Von Fulger method and product are somewhat similar to the alleged density of Trix®. Regardless, it is respectfully noted that Trix® cereal includes a number of vastly differently sized and shaped individual cereal pieces (e.g., replicating as a cluster of grapes, a watermelon slice, etc.). Each of these pieces will almost certainly have a markedly different density. Thus, not only is it impossible to verify the alleged density Von Fulger has assigned to Trix®, it is impossible to know which of the various, dissimilarly sized and shaped cereal pieces of Trix® it is in reference to. Thus, it is respectfully submitted that Von Fulger does not enable the teachings advanced by the Examiner. Even if the density-related limitation of amended claim 1 is viewed as being suggested by Von Fulger, the maximum outer dimension limitation is not, nor is the requirement of a substantially uniform, substantially spherical piece.

In light of the above, it is respectfully submitted that amended claim 1 is not taught or otherwise suggested by Newarski, or any other container reference in view of Christianson or Von Fulger.

Claims 2-6 depend from amended claim 1. As previously described, amended claim 1 is not taught or otherwise suggested by the cited references. Therefore, claims 2-6 are similarly allowable.

Amended claim 7 was, similar to claim 1, rejected as being obvious over Newarski in view of Christianson and Von Fulger. In this regard, amended claim 7 includes the on-the-go consumption and maximum outer dimension of less than 0.4-inch limitations as amended claim

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1. For the same reason previously provided, it is respectfully submitted that amended claim 7 is not taught or otherwise suggested by the cited references.

Claims 8-13 depend from amended claim 7. As previously described, amended claim 7 is not taught or otherwise suggested by the cited references. Therefore, claims 8-13 are similarly allowable.

Amended claim 14, similar to amended claims 1 and 7 previously described, relates to a portable, packaged good article including a container, a liquid consumable product, and a dry consumable product. Once again, the container is adapted to facilitate on-the-go consumption of liquid and dry consumable products. Newarski does not teach or otherwise suggest this limitation. Further, amended claim 14 recites the dry consumable product as being comprised of a plurality of pieces each having a density of not less than 225g/100 inch<sup>3</sup>. As previously described, Christianson and Von Fulger do not enable this limitation, and a requisite suggestion to combine either reference with Newarski does not exist. As such, it is respectfully submitted that claim 14 is allowable.

Claims 15-20 depend from amended claim 14. As previously described, amended claim 14 is not taught or otherwise suggested by the cited references. Therefore, claims 15-20 are similarly allowable.

Claim 21 was rejected as being anticipated by Dickerson. In particular, the Examiner viewed Dickerson as teaching uniformly shaped, or all spherical shaped, dry comestible pieces 42. This assertion is respectfully traversed for the following reasons. The Dickerson specification does not discuss the dry comestibles in any detail, other than to mention that products such as cereals, nuts, raisins, popcorn, small snack foods, and small fruits can be used (Dickerson, column 2, lines 54-56). In their currently available form, none of these products are uniformly shaped; instead, inherent shape variations exist from piece-to-piece (e.g., raisins can vary greatly in size, shape, density, etc.). The various figures of Dickerson in which the dry comestible product 42 is diagrammatically illustrated reflect this generalization. For example, FIG. 7 generically shows the dry comestible 42 as a series of differently sized circles. The vast range in size of these non-descript circles demonstrates Dickerson's assumption that the

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individual comestible pieces will be highly dissimilar, in direct contrast to claim 21. Further, the diagrammatical nature in which the comestible 42 is shown cannot be viewed as teaching uniformly spherical pieces. For example, the illustrated comestible pieces could be something entirely different from a sphere, such as a cylinder. Alternatively, even if it can be assumed that the illustrations reflect the dry comestible pieces as being sphere-like, Dickerson cannot be viewed as teaching that the pieces are uniformly shaped. Once again, the dry comestible 42 of Dickerson specifically entails the known products listed above, none of which are uniformly shaped. The fact that Dickerson diagrammatically illustrates each of the circles as being of different size fully supports a conclusion that the individual pieces are also differently (or non-uniformly) shaped. In short, Dickerson does not teach or even appreciate optimization of the dry consumable product in a manner that promotes substantially uniform, gravity-induced flow. In fact, FIG. 9C highlights the problems associated with Dickerson's failure to recognize potential problems associated with non-uniform, dry comestible pieces as, during the pouring operation of FIG. 9C, the pour opening associated with the dry consumable product is essentially clogged with two dry comestible pieces. For these reasons, then, it is respectfully submitted that claim 21 is not taught or otherwise suggested by Dickerson.

Claims 22-24 depend from claim 21. As previously described, claim 21 is not taught or otherwise suggested by Dickerson. None of the other cited references alter this conclusion. Therefore, claims 22-24 are similarly allowable.

Claim 32 relates to a method of manufacturing a packaged consumable product article and includes providing a container with two compartments and associated pour openings along with a dry consumable product comprised of a plurality of pieces each having a maximum outer dimension of not more than 0.4 inch. For the reasons previously provided above with respect to amended claim 1, it is respectfully submitted that none of the cited references teach or suggest at least this maximum outer dimension limitation. To this end, it is respectfully reiterated that a requisite suggestion to combine Christianson with Dickerson, as otherwise advanced by the Examiner, does not exist as the combination base cereal and puffed sugar bodies of Christianson are specifically designed to be combined with milk prior to consumption. The focus of

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Dickerson, on the other hand, is to have the cereal and milk mix in the consumer's mouth. As such, it is respectfully submitted that claim 32 is not taught or otherwise suggested by the cited references.

Claims 33-38 depend from claim 32. As previously described, claim 32 is not taught or otherwise suggested by the cited references. Therefore, claims 33-38 are similarly allowable.

Amended claim 39 similarly relates to a method of manufacturing a packaged consumable product article and includes providing a container and a dry consumable product. The container is adapted to facilitate on-the-go consumption of product from first and second compartments formed by the container. As previously described with respect to amended claim 1, Newarski, as otherwise cited by the Examiner as teaching the container of claim 39, is not adapted for on-the-go consumption. Further, the asserted densities associated with commercially available puffed RTE's, as otherwise advanced by the Examiner, are not enabled by Von Fulger. For at least these reasons, then, it is respectfully submitted that amended claim 39 recites allowable subject matter.

Claims 40-45 depend from amended claim 39. As previously described, claim 39 is not or otherwise suggested by the cited references. Therefore, claims 40-45 are similarly allowable.

**Newly Presented Claims**

Newly presented claim 46 depends from claim 21. As previously described, claim 21 is not taught or otherwise suggested by the cited references. As such, claim 46 is similarly allowable. Further, claim 46 recites that the plurality of pieces are substantially uniform in at least two characteristics. Support for this language is found, for example, at page 7, line 13-page 8, line 8. Under any interpretation, Dickerson clearly does not satisfy this limitation, nor do any of the other references. As such, it is respectfully submitted that claim 46 recites additionally allowable subject matter.

Newly presented claim 47 depends from claim 21. As previously described, claim 21 is not taught or otherwise suggested by the cited references. As such, claim 47 is similarly allowable. Further, claim 47 recites that each of the plurality of pieces are substantially



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spherical, deviating no more than 10% in any one dimension from a true sphere. Support for this limitation is found, for example, at page 7, lines 16-18. It is respectfully submitted that none of the cited references teach or otherwise suggest this limitation. As such, claim 47 recites additionally allowable subject matter.

Newly presented claim 48 depends from claim 21. As previously described, claim 21 is not taught or otherwise suggested by the cited references. Therefore, claim 48 is similarly allowable. Additionally, claim 48 recites that an entirety of the dry consumable product consists of the plurality of pieces that are substantially uniform in shape, size, and density. Support for this limitation is found, for example, at page 7, line 13-page 8, line 8. None of the cited references teach or otherwise suggest this limitation. Therefore, claim 48 recites additionally allowable subject matter.

Newly presented claim 46 depends from claim 32. As previously described, claim 32 is not taught or otherwise suggested by the cited references. Therefore, claim 49 is similarly allowable. Further, claim 49 recites that providing a dry consumable product includes selecting a maximum outer dimension of the plurality of pieces based upon a desired, gravity-induced flow. Support for this language is found, for example, at page 7, lines 22-29. As previously described, none of the cited references envision improving product flow via purposely selecting and forming a dry consumable product. Therefore, it is respectfully submitted that claim 49 recites additionally allowable subject matter.

Newly presented claim 50 depends from claim 49. As previously described, claim 49 is not taught or otherwise suggested by the cited references. Therefore, claim 50 is similarly allowable. Further, claim 50 recites that the selected maximum outer dimension of the plurality of pieces is based upon an estimated cross-sectional area of a pour opening. Support for this language is found, for example, at page 11, line 30-page 12, line 5. As previously described, none of the cited references recognize, let alone teach or suggest, correlating dry consumable product piece size with an associated opening through which the pieces are poured. Therefore, it is respectfully submitted that claim 50 recites additionally allowable subject matter.

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Newly presented claim 51 depends from claim 32. As previously described, claim 32 is not taught or otherwise suggested by the cited references. Therefore, claim 51 is similarly allowable. Further, claim 51 recites forming the plurality of pieces based upon an ingredient formulation of an available dry consumable product consisting of a plurality of pieces each having an outer dimension greater than 0.4 inch. Support for this language is found, for example, at page 12, lines 24-32 and page 18, claim 28. It is respectfully submitted that none of the cited references teach or otherwise suggest utilizing the ingredient formulation of an available product, that otherwise does not facilitate optimal flow, to form the plurality of pieces. As such, it is respectfully submitted that claim 51 recites additionally allowable subject matter.

Finally, newly presented claim 52 depends from claim 51. As previously described, claim 51 is not taught or otherwise suggested by the cited references. Therefore, claim 52 is similarly allowable. Additionally, claim 52 recites that an ingredient formulation of the dry food product is the same as the ingredient formulation of the available dry food product. Support for this limitation is found, for example, at page 12, lines 24-30 and page 18, claim 28. For the reasons previously described with respect to newly presented claim 51, none of the references teach or otherwise suggest this limitation. As such, it is respectfully submitted that claim 52 recites additionally allowable subject matter.

**CONCLUSION**

It is believed that all claims are now in a condition for allowance. Notice to that effect is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 500471.

Attached hereto is a marked-up version of the changes made to the specification and/or the claims by the current Amendment. The attached pages are captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE**".

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The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

Charley Lloyd,

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**CERTIFICATE UNDER 37 C.F.R. 1.8:** The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Commissioner for Patents, Washington, D.C., 20231 on this 9<sup>th</sup> day of August, 2002.

By Timothy A. Czaja  
Name: Timothy A. Czaja